FILE COPY

No. 137

In the Supreme Court of the United States

October Term, 1941

MATSON NAVIGATION COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (R. 37–40) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered on May 11, 1931. (R. 40.) The petition for a writ of certiorari was filed on June 5, 1931. (R. 40.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Section 154 of the Judicial Code deprives the Court of Claims of jurisdiction when immediately after the institution of the suit in the Court of Claims proceedings are brought against the United States in a District Court on the same causes of action.

2. Whether the Court of Claims had jurisdiction of a suit brought against the United States by the owner of merchant vessels for payments alleged to be due under requisition charters of the vessels while they were operated for the United States. The suit was brought after the enactment of the Suits in Admiralty Act of March 9, 1920, and the cause of action arose after April 6, 1917 (the date mentioned in Section 5 of that Act).

STATUTES INVOLVED

These are printed in the Appendix, pp. 8–10, *infra*.

STATEMENT

The Court of Claims rendered judgment in favor of the United States upon a motion to dismiss the action for lack of jurisdiction under Section 154 of the Judicial Code, p. 8, *infra*. The petition alleged that in October, 1917, the United States requisitioned seven vessels belonging to the petitioner, and that in December, 1917, the petitioner and the United States executed seven requisition charters

which provided that the owner should operate the vessels for the United States and the United States would pay the petitioner for the use of each vessel at a monthly rate, and, in addition, would reimburse the petitioner for any proper increases over a certain standard of wages and bonuses to masters, officers, and crew. (R. 8, 9.) This suit was brought April 6, 1927, to recover certain increases in wages and bonuses alleged to have been made under these requisition charters.

The Court of Claims found that on April 7, 1927, the petitioner filed in the District Court for the Southern District of California seven suits against the United States on the seven requisition charters pleaded in the petition in the Court of Claims, seeking to recover for the increases in wages and bonuses alleged to have been made. (R. 36.) These suits are now pending in the District Court. (R. 37.)

ARGUMENT

Petitioner contends that Section 154 of the Judicial Code has no bearing on the instant case, for the reason that by its terms it deprives the Court of Claims of jurisdiction only when there is pending in another court a suit brought by the same plaintiff on the same cause of action against—

> any person who * * * was * * * acting or professing to act * * * under the authority of the United States.

Petitioner further contends that the statute was designed to protect the Government only in cases where the doctrine of *res adjudicata* could not be invoked, and that where, as in the instant case, both suits are against the United States, ample protection is afforded by the rule permitting abatement of the second action pending a determination of the first.

With respect to the purpose of the statute, the Court of Claims said (R. 39):

> The whole object and intent of the act of 1868 were to prevent the Government from being sued in separate jurisdictions on the same cause of action and to make the plaintiff elect in which court to sue. The act not only prohibits the filing but also the prosecution of any claim in the Court of Claims when another suit on the same cause of action is pending in another court. The seven suits in the District Court of California were filed one day after the suit was filed in this court, but the plaintiff is now attempting to prosecute the suit in this court while the suits in the district court are pending. This is prohibited under the statute. *Corona Coal Company* v. *The United States*, 263 U. S. 537.

We believe that it is doubtful whether this decision of the Court of Claims is correct. The question seems never to have been squarely decided before, and we should be disinclined to oppose the

petition if it would be necessary to decide this question upon a review of the case.

But we submit that the action should have been dismissed for want of jurisdiction because of other considerations.

The suit is for reimbursement under the terms of certain requisition charters of bonuses and wage increases paid by the petitioner or, as worded in the petition (R. 13):

> * * * sums claimed by the claimant to be due to it from defendant pursuant to said provision contained in each of said requisition charters that the defendant would pay to the claimant as additional compensation for the use of said vessels, all sums paid by the claimant for any proper increases in wages and bonuses over the standard prevailing August 1, 1917, for master, officers and crew.

The suit is not one for just compensation for requisition, for the contract was accepted in lieu of compensation. It is a suit upon a maritime contract. On such a contract a proceeding in admiralty could be maintained in the District Courts. *The Nellie T,* 235 Fed. 117 (C. C. A. 2d); *Dunbar* v. *Weston,* 93 Fed. 472 (N. D. N. Y.); *The Arlyn Nelson,* 243 Fed. 415 (W. D. Wash.); *United Fruit Co.* v. *Fleet Corporation,* 42 F. (2d) 222 (D. C. Mass.); *Norton* v. *Southern Railway Co. et al.,* 246 N. Y. S. 676; Benedict on Admiralty (5th ed.), sec. 96.

Under Sections 1 and 2 of the Suits in Admiralty Act of March 9, 1920, c. 95, 41 Stat. 525, 526 (U. S. C., Title 46, Secs. 741, 742) (p. 8–10, *infra*), this remedy is exclusive. *Johnson* v. *Fleet Corporation,* 280 U. S. 320. We submit, therefore, that the Court of Claims was without jurisdiction of the suit for this reason.

Substantially this same point is raised in the Government's pending petition for certiorari to the Court of Claims in *United States* v. *Olympia Shipping Corporation,* No. 85, Oct. Term, 1931.

CONCLUSION

We contend that the Court of Claims should have dismissed the action for want of jurisdiction on the ground that the sole remedy of the petitioner was in the District Court under the Suits in Admiralty Act. This point was not considered by the court below. It is raised in the Government's pending petition for certiorari in *United States* v. *Olympia Shipping Corporation,* No. 85, Oct. Term, 1931. We suggest that action upon the present petition might well be deferred until a final decision in the *Olympia Shipping* case. If our petition in that case is granted and our contention therein is sustained after hearing on the merits, there will be no occasion to grant the petition in the instant case. But if that petition should be denied, or if, after a hearing in this Court, the respondent in that case should prevail, we would not oppose the issu-

ance of the writ in the instant case in order to obtain a review of the decision as to the effect of Section 154 of the Judicial Code.

Respectfully submitted.

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AUGUST, 1931.

APPENDIX

Section 154 of the Judicial Code, c. 231, 36 Stat. 1087, 1138 (U. S. C., Title 28, Sec. 260), provides:

> No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

The Suits in Admiralty Act of March 9, 1920, c. 95, 41 Stat. 525, 526 (U. S. C., Title 46, Sec. 741, provides in part:

> That no vessel owned by the United States or by any corporation in which the United States or its representative shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

* * * * *

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits

based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises.

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